

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP (C) No.12101 of 2005

% Date of decision: 14.07.2008

EX DFR/ASH B.K. SETHI ...PETITIONER
Through: Mr. P.D.P. Deo, Advocate.

Versus

UNION OF INDIA & ORS. ...RESPONDENTS
Through: Ms. Madhu Sharan &
Mr. Jai Bansal, Advocates with
Major S.S. Pandey for the
Respondents.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

SANJAY KISHAN KAUL, J. (Oral)

1. Rule DB.
2. At the request of the learned counsels for the parties, the petition is taken up for final disposal.
3. The petitioner joined the Indian Army in the Corps of Army Service Corps and was posted to do the duties of Mess Havaldar at the Officers Mess at 876 AT COY ASC.

4. An incident occurred in January 1992 on account of the petitioner disobeying lawful command and order given by his superior. Despite this the petitioner was granted an extension of service on 24.4.2000 for two (2) years.
5. The Record Officer, however, intimated the Unit of the petitioner on 26.4.2001 that the petitioner lacked the disciplinary criteria and he was permanently debarred for promotion under Section 41 (2) of the Army Act (hereinafter referred to as the said Act). The petitioner claims that it is only at that stage that he came to know that the incident of January 1992 resulted in a 'severe reprimand' under AA Section 41 (2) of the said Act and the consequent punishment was coming in his way of extension of service and promotion to the post of Naib Risaldar and thus made a representation dated 8.5.2001. There was no response to the same and the petitioner submitted a non-statutory complaint against the punishment on 22.5.2001. The GOC 4 Corps considered this non-statutory complaint and held in favour of the petitioner by setting-aside the punishment of 'severe reprimand' awarded to him as illegal and the petitioner was relieved of all consequences arising therefrom.
6. The GOC 4 Corps forwarded the said decision to the Headquarters, Western Command who in turn forwarded the same to the GOC 2 Corps. This arose out of the fact

that when the petitioner was imposed with the punishment, the petitioner was serving GOC 2 Corps. The petitioner was, however, fortunate inasmuch as the GOC 2 Corps also came to the same conclusion as the GOC 4 Corps and set aside the punishment of the petitioner on 3.3.2002. In the mean time, however, the petitioner was discharged from service on 31.7.2001.

7. The petitioner on coming to know of the setting aside of the punishment requested for reinstatement, promotion to the rank of Naib Risaldar and restoration of extension of two (2) years service which he was deprived of by sending the said representation dated 17.8.2002 to the Chief of Army Staff. This claim was, however, rejected vide order dated 19.2.2003. The petitioner sent a legal notice and thereafter has filed the present writ petition.
8. The complete controversy relating to the matter in issue is abundantly clear from the decision rendered on 19.2.2003 and thus the same is reproduced as under:

“REDRESSAL OF GRIEVANCE”

1. Please refer to your petition dated 28 Aug 2002 submitted to the Chief of the Army Staff.
2. In your petition, you have stated that you have been discharged from service as a Dafadar without extension and have requested for re-instatement. You have argued that the award of punishment dated 12 Feb 92 while serving with 876 AT Coy ASC under HQ 2 Corps/Western Command, disqualifying you from grant of two years extension in the rank of Dafadar, has been set aside by the order dated 03 Mar 2002 of GOC 2 Corps and therefore, your case be reviewed and you should get re-instated.

3. Perusal of the case reveals that both HQ Western Command and you have been duly informed of the disposal of the Non-Statutory complaint submitted by you. In this connection, please refer ASC Records (AT) letter No.6466736/BKS/LC/Pen dated 18 Jul 2002, herewith copies of Army Headquarters letter No.3/80298/JAG dated 20 Jun 2002 and 77719/Q/II/ST-12 dated 28 Jun 2002 enclosed.
4. The following have been conveyed to you:-
- (a) You were granted 02 years extension of service 'inadvertently'. During the review of your service documents, it was found that because of award of punishment under Army Act Sec 41 (2), you were 'unfit' for extension of service. Accordingly your discharge order was issued with the instructions that you be SOS wef 31 Jul 2001 (AN) and finally you were SOS from the Army WEF 01 Aug 2001.
 - (b) You have submitted Non-Statutory Complaint dated 23 May 2001 while serving with 879 AT Bn under HQ 4 Corps/Eastern Command representing against award of punishment dated 12 Feb 92 i.e. after 9 years whereas such representation is to be made within 2 years of award of punishment. The then Offg GOC 4 Corps vide his directions dated 23 Jul 2001 aside the punishment.
 - (c) But it was found later that the disposal was in contravention of Para 4 of AO 1/99 because the punishment was awarded while serving with 876 AT Coy ASC under HQ 2 Corps. Thereafter, the case was transferred to HQ Western Command vide HQ 4 Corps letter No.15011/C Tps/AL dated 03 Aug 2001 whereas you were already SOS from the Army on 01 Aug 2001. Army HQ was consulted on the issue. Being the competent authority as per Para 4 of AO 01/99, GOC HQ 2 Corps set aside the punishment awarded to you on 12 Feb 92 vide his direction dated 03 Mar 2002.
 - (d) However, it has been decided at Army HQ that your representation dated 23 May 2001 is time barred as it was to be submitted within 2 years from the date of punishment dated 12 Feb 92. Second, as the heading of the "the complaint itself describes it as non-statutory and so did the

order dated 03 Mar 2002 of GOC 2 Corps (besides 23 Jul 2001 of GOC 4 corps), there exists little rationale to treat it as a statutory complaint". Therefore, "the orders dated 03 Mar 2002 of GOC 2 Corps on the Non-Statutory complaint cancelling the punishment would not amount to bring the individual back in service who had by then already been discharged from service." Third, "Order dated 03 Mar 2002 of GOC 2 Corps on the non-statutory complaint notwithstanding, the summary trial was legal exhibiting no illegality in the charge. Desirability of framing a charge under some other Sec, which even if more appropriate, will not render the charge actually leveled bad in law. There was no justification put forth for the delay of almost nine years in seeking redressal".

5. In view of the above, it is regretted to inform you that your request has not been acceded to, therein being no merit.

Sd/-
(DS Dhaka)
Major
SO to DGST
for DGST"

9. A perusal of the aforesaid shows that in the case of the petitioner it is only the punishment of 'severe reprimand' which stood in his way of extension of two (2) years as also for his consideration for promotion to the post of Naib Risaldar. The CO of the Unit found that the punishment ought not to have been imposed. The reason for rejection of the representation of the petitioner is stated to be the fact that the petitioner had approached after nine (9) years against the punishment. The point, however, remains that though the representation was to be made within two (2) years, the petitioner claims that he came to know of the 'severe

reprimand' coming in his way of extension of service and promotion only when on the review of the decision of the extension of service of the petitioner, took place on 26.4.2001. We cannot ignore the fact that the CO of the Unit ultimately found that the petitioner was not liable to be severely reprimanded which came in his way of extension of service and promotion.

10. We are unable to accept the plea that the petitioner should be without redressal of his grievance only on account of the fact that in the mean time the petitioner had been discharged from service on 31.7.2001. However, simultaneously we cannot lose sight of the fact that the petitioner did not actually serve the Army during this period of time and must face some consequences on account of the delay. The question of the promotion of the petitioner would have been considered by a Board but the petitioner was held ineligible only account of the punishment, which has been ultimately set aside.
11. We, thus, consider it appropriate to direct that a Board be held to examine whether the petitioner was entitled to be promoted if the punishment of 'severe reprimand' had not been imposed on him. In case the Board comes to a favourable consideration, the petitioner would be notionally promoted.

12. The petitioner would not be entitled to the monetary benefits of extension of two (2) years or of the promoted rank but would be entitled only to the pensionary benefits arising therefrom by fixation of his pay notionally as on 31.7.2003 whether in the existing rank or in the promoted rank. It is pointed out to us that in case the Board finds that the petitioner ought to have been promoted, the petitioner would have got further extension of two (2) years service. In that eventuality, he would have retired on 31.7.2005 and his pension would have been accordingly fixed. Thus, the petitioner is, in any case, entitled to the pensionary benefits of notional retirement from 31.7.2003 in the existing rank and in case the Promotion Board finding in favour of the petitioner, in the promoted rank with notional retirement, from 31.7.2005.
13. The aforesaid decision be taken within a maximum period of three (3) months from today.
14. The petition is allowed in the aforesaid terms leaving the parties to bear their own costs.
15. Dasti.

SANJAY KISHAN KAUL, J.

JULY 14, 2008
b'nesh

MOOL CHAND GARG, J.